

PUBLIC UTILITIES COMMISSION

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May 20, 2016

Agenda ID #14931
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 15-11-013:

This is the proposed decision of Administrative Law Judge Adeniyi A. Ayoade. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 23, 2016 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ RICHARD SMITH for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:ek4
Attachment

Decision **PROPOSED DECISION OF ALJ AYOADE** (Mailed 5/20/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Top Notch Networking, LLC
for a Certificate of Public Convenience and
Necessity as a Telephone Corporation
pursuant to the Provisions of Pub. Util.
Code Section 1001.

Application 15-11-013
(Filed November 12, 2015)

DECISION DISMISSING APPLICATION WITHOUT PREJUDICE

Summary

This application filed by Top Notch Networking, LLC (Top Notch) for a Certificate of Public Convenience and Necessity (CPCN) in order to provide resold local exchange telecommunications services and resold interexchange service throughout California is dismissed without prejudice because Top Notch failed to provide the California Public Utilities Commission (Commission) with the information the Commission requested.

1. Background

On November 12, 2015, Top Notch Networking, LLC (Top Notch), a California limited liability company authorized to do business in California,¹ filed Application 15-11-013 (hereinafter “application”) with the Commission for a Certificate of Public Convenience and Necessity (CPCN) to provide resold local

¹ According to the California Secretary of State’s website, there are no issues regarding Top Notch registration, status, or its ability to conduct business in California.

exchange telecommunications services, and resold interexchange service in California pursuant to Public Utilities Code § 1001.²

After the assigned Administrative Law Judge (ALJ) completed his initial review of Top Notch's application, on January 20, 2016, the ALJ issued a ruling requesting additional information from Top Notch. Top Notch timely provided the requested information on January 22, 2016.

Further review of Top Notch's application by the ALJ revealed that additional information is required by the Commission in order to complete the review of Top Notch's application. Therefore, on February 19, 2016, the ALJ issued a second ruling directing Top Notch to provide additional information to the Commission in support of its application. As requested in the February 19, 2016 ruling, Top Notch must: (1) describe the services it intends to provide if granted the requested CPCN; and (2) provide declaration under penalty of perjury that it will "obey the Code, ... all of the Commission's rules, decisions, and orders applicable to telephone corporations," among others, on or before March 2, 2016. Top Notch did not respond to the February 19, 2016 ALJ's ruling.

On March 17, 2016, the ALJ issued a follow-up ruling reminding Top Notch that it has not provided the information requested in the February 19, 2016 ruling, and further directing Top Notch to comply with the February 19, 2016 ruling and provide the information requested therein. In his March 17, 2016 ruling, the ALJ provided as follows:

² In this decision, all statutory references are to the Public Utilities Code unless otherwise indicated.

A review of Top Notch's application for a CPCN cannot be completed without the requested information. Therefore, if Top Notch intends that the Commission continue its consideration of Top Notch's application for CPCN, Top Notch must provide the information requested in the February 19, 2016 ruling, to the Commission, on or before March 24, 2016. Failure to respond to this ruling may result in the dismissal of this application as incomplete. (emphasis added)

To date, Top Notch has not provided the information requested in the February 19, 2016 ruling as reiterated in the ALJ's March 17, 2016 ruling.

Given Top Notch's failure to provide the requested information, a review of Top Notch's application cannot be completed. Accordingly, Top Notch's application should be dismissed without prejudice. Top Notch should be allowed to refile at a later date and be required to reference and/or disclose this application, should Top Notch file a new application for a CPCN to provide resold local exchange telecommunications services and/or resold interexchange service in California, in the future.

2. Jurisdiction

Section 216(a) defines the term "Public utility" to include a "telephone corporation," which in turn is defined in Section 234(a) as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

Top Notch proposes to provide telecommunications services and interexchange services to customers in California. The services Top Notch seeks authorization to provide would render Top Notch a telephone corporation and a public utility subject to Commission's jurisdiction.

3. Categorization and Need for Hearing

In Resolution ALJ 176-3368, dated December 3, 2015, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Given the proposed dismissal of this application without prejudice due to the fact that a review of the application cannot be completed, an evidentiary hearing is not necessary, and it is not necessary to change the preliminary determinations.

4. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Adeniyi A. Ayoade is the assigned ALJ in this proceeding.

5. Comments on Proposed Decision

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and procedure. Comments were filed by _____ on _____.

Findings of Fact

1. On November 12, 2015, Top Notch filed Application 15-11-013 for a CPCN to provide resold local exchange telecommunications services, and resold interexchange service in California.

2. On February 19, 2016, the assigned ALJ issued a ruling requesting Top Notch to provide additional information in support of its application, and Top Notch failed to provide the requested information.

3. On March 17, 2016, the ALJ issued another ruling directing Top Notch to provide the information requested in the February 19, 2016 ruling, and informing Top Notch that its application may be dismissed should Top Notch fail to provide the requested information by March 24, 2016.

4. To date, Top Notch has not responded to either the February 19, 2016 ruling or the March 17, 2016 ruling and has failed to submit the information requested.

Conclusions of Law

1. Top Notch Networking, LLC has failed to provide the information required by the Commission in this proceeding, and its application is incomplete.

2. Top Notch Networking, LLC does not have authority to operate as a resold local exchange telecommunications services or resold interexchange service carrier in California.

3. The Application should be dismissed without prejudice.

4. If Top Notch files a new application for a CPCN to operate as a resold local exchange telecommunications services or resold interexchange service carrier in California, it should be required to disclose this application

5. The record in this proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Application 15-11-013 is dismissed without prejudice.

2. Top Notch Networking, LLC shall not provide resold local exchange telecommunications services and/or resold interexchange service in California.

3. The Commission's Safety and Enforcement Division may initiate necessary enforcement actions against Top Notch Networking, LLC if it operates as a telecommunications carrier in California without proper Commission authority.

4. Top Notch Networking, LLC must disclose this application if it files a new application for a certificate of public convenience and necessity to operate as a

resold local exchange telecommunications services or resold interexchange service carrier in California.

5. Application 15-11-013 is closed.

This order is effective today.

Dated _____, 2016, at San Francisco, California.